

REFERENCE TITLE: unauthorized; soldier's name; technical correction

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1001

Introduced by
Senator Waring

AN ACT

AMENDING SECTION 12-761, ARIZONA REVISED STATUTES; RELATING TO ADVERTISING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 12-761, Arizona Revised Statutes, is amended to
3 read:

4 12-761. Right of publicity: unauthorized use of the name,
5 portrait or picture of a soldier; exceptions;
6 definition

7 A. The right to control and to choose whether and how to use a
8 soldier's name, portrait or picture for commercial purposes is recognized as
9 each soldier's right of publicity.

10 B. A person is liable for using the name, portrait or picture of any
11 soldier without having obtained prior consent to the use by the soldier or by
12 the soldier's spouse, immediate family member, trustee if the soldier is a
13 minor or legally designated representative if the person uses the name,
14 portrait or picture for any of the following purposes:

15 1. Advertising for the sale of any goods, wares or merchandise.

16 2. Soliciting patronage for any business.

17 3. Receiving consideration for the sale of any goods, wares or
18 merchandise.

19 C. A person who uses the name, portrait or picture of a soldier for a
20 prohibited purpose without prior consent from the soldier or a person who may
21 enforce the soldier's rights and remedies is subject to the following:

22 1. Injunctive relief to prevent or restrain the unauthorized use.

23 2. Treble damages.

24 3. Punitive or exemplary damages.

25 4. Attorney fees and costs.

26 D. In calculating damages, any profits from the unauthorized use that
27 are attributable to that use shall be taken into account.

28 E. The rights and remedies provided in this section supplement any
29 other rights and remedies provided by law, including the common law right of
30 privacy.

31 F. Any claim for relief that is requested pursuant to this section
32 shall be brought within five years after the unauthorized publication.

33 G. The right of publicity is a property right that survives a
34 soldier's death. On the soldier's death, only the following individuals may
35 enforce the soldier's rights and remedies in the following order:

36 1. The soldier's legally designated representative.

37 2. The soldier's spouse.

38 3. The soldier's parents.

39 4. The soldier's children.

40 5. The soldier's grandchildren.

41 H. This section does not apply to the following:

42 1. The use of a soldier's name, portrait or picture in an attempt to
43 portray, describe or impersonate that soldier in a live performance, a single
44 and original work of fine art, OR a play, book, article, musical work or
45 film, or on radio, OR television or IN ANY other audio or audiovisual work

1 if the performance, musical work, play, book, article or film does not itself
2 constitute a commercial advertisement for any goods, wares or merchandise.

3 2. The use of a soldier's name, portrait or picture for noncommercial
4 purposes, including any news, public affairs or sports broadcast or account.

5 3. The use of a soldier's name in truthfully identifying the soldier
6 as the author of a particular work or program or as the performer in a
7 particular performance.

8 4. Any promotional materials, advertisements or commercial
9 announcements for a use described in paragraph 1, 2 or 3 of this subsection.

10 5. The use of photographs, video recordings and images by a person,
11 firm or corporation practicing the profession of photography to exhibit, in
12 or about the professional photographer's place of business or portfolio,
13 specimens of the professional photographer's work, unless the exhibition is
14 continued by the professional photographer after written notice objecting to
15 the exhibition by the portrayed soldier or a person who may enforce the
16 soldier's rights and remedies.

17 6. A soldier's picture or portrait that is not facially identifiable.

18 7. A photograph of a monument or a memorial that is placed on any
19 goods, wares or merchandise.

20 I. For the purposes of this section, "soldier" means any active duty
21 member or former member of the armed forces of the United States, including
22 any member who was killed in the line of duty.